



IN THE
Supreme Court of the United States

OCTOBER TERM, 1945.

No. _____

JONAS A. MILLER,

Petitioner,

vs.

THE UNITED STATES OF AMERICA,

Respondent.

PETITIONER'S BRIEF IN SUPPORT OF PETITION FOR WRIT
OF CERTIORARI TO CIRCUIT COURT OF APPEALS FOR THE
SEVENTH CIRCUIT.

ERROR RELIED ON.

The United States Circuit Court of Appeals for the Seventh Circuit erred in holding that where a particular act is rendered criminal under a penal statute of the Congress, the doing of another act, not specifically denounced or prohibited, will be held within the intent of the statute and subject the actor to like punishment as if its commission were expressly prohibited and rendered punishable by the statute, if the act committed is calculated to produce the evil results which the Congress, by the statute, designed to avert. Specifically, in this case, that the act of petitioner in participating in the letting of a farm implement for a period of ten years, where the aggregate rental reserved exceeded the "ceiling" price on the article were it sold, is guilty of violation of the regulation which prohibits "sale" of the article above the stipulated limit.

ARGUMENT.

To demonstrate that the action of the District Court and the Circuit Court of Appeals on the question presented is in conflict with the consistent applicable decisions of this Court, petitioner needs but quote from Chief Justice Marshall's opinion in *United States v. Wiltberger*, (1820) 18 U. S. (5 Wheat.) 76, loc. cit. 96, 5 L. ed. 37, loc. cit. 42:

"To determine that a case is within the intention of a statute, its language must authorize us to say so. It would be dangerous, indeed, to carry the principle, that a case which is within the reason or mischief of a statute, is within its provisions, so far as to punish a crime not enumerated in the statute, because it is of equal atrocity, or of kindred character, with those which are enumerated. If this principle has ever been recognized in expounding criminal law, it has been in cases of considerable irritation, which it would be unsafe to consider as precedents forming a general rule for other cases";

and from the opinion by Mr. Justice Butler, in *Fasulo v. United States* (1926), 272 U.S. 620, loc. cit. 629, 71 L. ed. 443, loc. cit. 445:

"There are no constructive offenses; and before one can be punished, it must be shown that his case is plainly within the statute";

and from *United States v. Resnick* (1936), 299 U.S. 208, loc. cit. 209, 81 L. ed. 127, loc. cit. 129:

"Statutes creating crimes are to be strictly construed in favor of the accused; they may not be held to extend to cases not covered by the words used."

Never, so far as petitioner's counsel are advised, has this salutary principle of criminal justice been departed from by the decisions of this Court. Equally convinced is

petitioner that the action of the trial court and the judgment of the Circuit Court of Appeals in this case have set this principle at naught and that it should not be sanctioned or acquiesced in by denial of the petition herein filed.

Respectfully Submitted,

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